

SERVICE DATE – LATE RELEASE JULY 24, 2015

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 551 (Sub-No. 2X)]

Knox and Kane Railroad Company—Abandonment Exemption—McKean County, Pa.

Knox and Kane Railroad Company (Knox & Kane) has filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon a stub-ended line of railroad between Mt. Jewett, Pa. (milepost 165.2) and the Kinzua Bridge (milepost 169.1), a distance of 3.9 miles in McKean County, Pa. (the Line). The Line traverses United States Postal Service Zip Code 16740.<sup>1</sup>

Knox & Kane has certified that: (1) no local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been

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<sup>1</sup> By decision served on April 14, 2015, the Board directed Knox & Kane to submit supplemental information and postponed the effectiveness of the exemption until further order of the Board. Knox & Kane submitted its supplemental information on June 1, 2015. In a decision served today in this docket, the Board removes this case from abeyance and deems the notice of abandonment exemption to have been filed on July 9, 2015.

decided in favor of complainant within the two-year period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

Where the carrier is abandoning its entire line, the Board generally does not impose labor protective conditions under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See, e.g., W. Ky. Ry.—Aban. Exemption—in Webster, Union, Caldwell & Crittenden Cntys., Ky., AB 449 (Sub-No. 3X), slip op. at 2 (STB served Jan. 20, 2011). Because Knox & Kane does not appear to have a corporate affiliate or parent that will continue similar operations or that will realize substantial financial benefits over and above relief from the burden of deficit operations by Knox & Kane, employee protective conditions will not be imposed.

Provided no formal expression of intent to file an OFA has been received, the exemption will be effective on August 31, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to

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<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

file an OFA under 49 C.F.R. § 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by August 10, 2015. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by August 19, 2015, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to Knox & Kane's representative: Richard R. Wilson, 518 N. Center Street, Suite 1, Ebensburg, PA 15931.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Knox & Kane has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. The Board's Office of Environmental Analysis (OEA) issued an environmental assessment (EA) in this proceeding, which was served on March 23, 2015. Environmental, historic preservation, public use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), Knox & Kane shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Knox &

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<sup>3</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 C.F.R. § 1002.2(f)(25). Although Knox & Kane suggests that it might be appropriate for the Board to exempt this transaction from the OFA provisions, it expressly states that it has not sought such an exemption. Knox & Kane Notice 4 n.2.

Kane's filing of a notice of consummation by July 24, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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Decided: July 24, 2015

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.